

## **REMARKS**

### **I. Reply to Notice of Non-Compliant Amendment**

A Notice of Non-Compliant Amendment that was mailed on June 4, 2010, indicated that an Amendment that was filed on May 25, 2010 was non-compliant because claim 1 was improperly amended, in that line 7 had the word "an" inserted immediately following the word "occurring," without the required underling.

The present Amendment corrects the grounds on with the Amendment filed on May 25, 2010 was found to be non-compliant. The Amendment found to be non-compliant was an after-final amendment. Pursuant to the section of the Notice of Non-Compliant Amendment entitled, "TIME PERIODS FOR FILING A REPLY TO THIS NOTICE," the entire corrected amendment has been resubmitted.

### **II. Status of the Claims**

Upon entry of this Amendment, claims 1, 3-5, 7-14, 21-25 and 27-34 are pending. All cancelled claims are cancelled without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter of all cancelled claims in one or more divisional and/or continuation applications.

Claims 21-25 and 27-32 are allowed.

Claims 13, 14, 33 and 34 have been withdrawn from consideration by the Examiner as being directed to non-elected subject matter. As discussed below, the Examiner is requested to rejoin claims 13, 14, 33 and 34.

Claims 1, 4, 5, 13, 24, 25 and 33 have been amended.

Claim 1 has been amended to incorporate limitations previously set out in claim 2. Claims 4, 5 and 13 have been amended to accord with the amendment to claim 1. Claims 24 and 25 have been amended to depend from claim 27. Claim 33 has been amended to be in accord with its base claim, claim 21.

By this Amendment, no new matter has been added to the application.

### **III. Response to Rejection Under 35 U.S.C. §102**

Claims 1, 7, 10 and 11 were rejected as allegedly being anticipated by Frazer et al., WO 98/23635 ("Frazer"). In response, without conceding the validity of the rejection, claim 1 has been amended to incorporate the limitations previously set forth in claim 2 (which has been cancelled). The Examiner objected to claim 2 as depending from a rejected claim (i.e., claim 1) but failed to set forth a ground for rejecting claim 2. Accordingly, claim 1 is allowable. Claims 7, 10 and 11 depend either directly or indirectly from claim 1 and are hence also allowable.

Claims 2-5, 8, 9, and 12 were objected to as depending from rejected claims. All rejections are believed to be overcome. The objection to claims 2-5, 8, 9, and 12 is therefore moot.

For the reasons set out, all rejections based on Frazer have been addressed and overcome. Reconsideration of the claims and withdrawal of all rejections under 35 U.S.C. §102 is requested.

### **IV. Request for Rejoinder**

Subsisting claims 13, 14, 33 and 34 have been withdrawn from consideration by the Examiner as being directed to non-elected subject matter. Elected claims 1, 3-5, and 7-12 and withdrawn claims 13 and 14 are related as compound and/or composition and methods of using such compounds and/or compositions. Similarly, elected claims 21-25 and 27-32 and withdrawn claims 33 and 34 are related as compound and/or composition and methods of using such compounds and/or compositions. Applicant may as a matter of right request rejoinder of method of use claims that depend from allowed compound and/or composition claims or otherwise include all the features and limitations of such allowed claims. *See* MPEP 821.04(b). Claims 13 and 14 depend from base claim 1, which is allowable. Claims 33 and 34 depend from base claim 21, which has been allowed. Claims 13, 14, 33, and 34 are moreover believed to comply with the requirements of 35 U.S.C. §§ 101 and 112. Rejoinder and allowance of claims 13, 14, 33 and 34 is respectfully requested.

**V. Conclusion**

This application is believed to be in condition for allowance, which is earnestly solicited. If the Examiner believes that there are additional issue to be addressed that can be advanced by an Examiner's Amendment or an interview, the Examiner is cordially invited to contact the undersigned attorney.

Respectfully submitted,

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/Mitchell Bernstein/

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